

139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1783-2024 (O&M)

Date of decision: 20.03.2024

Asha Rani

....Petitioner

Versus

Vandana Rani

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S.Thakur, Advocate for
Mr. Monty Goyal, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. In this revision petition, the defendant assails the correctness of the trial court's order dismissing his application for permission to amend the written statement as well as the counter claim. In the counter claim, the petitioner has prayed for the grant of decree for the specific performance of the agreement to sell. In substance, the defendant submits that due to inadvertent mistake khasra no.219-355 has been written in the plaint, which is required to be corrected with khasra no.319-355.

2. The second proposed amendment is that the date 16.09.2017 is required to be replaced with 06.09.2017. The court below has refused the permission on the ground that the trial has commenced and the defendant's evidence is going on. In the opinion of this Court, the order passed is without application of mind. Such typographical errors can always be corrected after the decision of the suit under

Section 153 of the Code of Civil Procedure, 1908. In any case, the amendments are required to be categorized in various categories including procedural amendments, errors arising out of typographical or printing errors and substantive errors. For correcting arithmetical or clerical mistake, the approach of the court should be liberal, particularly when such amendments are permitted after the decision of the case. In the present case, the suit is pending at the trial stage.

3. Reliance can be placed on the judgment of the Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another*** 2022 AIR (Supreme Court) 4256. In para 70 of the aforesaid judgment, the Supreme Court has culled out the following tests, which are required to be applied before allowing the amendment:-

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed.

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless-

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”

4. Keeping in view the aforesaid facts, the impugned order is set aside while permitting the petitioner (defendant) to amend the written statement and counter claim. This order has been passed without issuing notice to the plaintiff, hence, she will have the liberty to file an application for recall of this order.

5. The revision petition stands allowed.

6. All the pending miscellaneous applications, if any, are also disposed of.

20.03.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE